SINGAPORE REPORTS.

TEO HEO HUAT v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) September 7, 1949]

[Singapore — Magistrate's Appeal No. 69 of 1949]

Opium and Chandu Proclamation — Possession of chandu — Sentence.

This was an appeal against sentence in a case of possession of chandu.

Held, that severe punishment under the Opium and Chandu Proclamation should, generally speaking, be reserved for traffickers and others who make a living rather than for the actual smoker.

MAGISTRATE'S APPEAL.

Appellant in person.

A. H. Simpson (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — This was the case of a chandu smoker. I consider that, generally speaking, severe punishment should be reserved for traffickers and others who make a living rather than for the actual smoker, who probably contracted the habit when it was quite legal. If it is possible prison sentences should be avoided, and, if resorted to, it should be with view to a possible cure. In the present case the appellant was sentenced to 9 months r.i. on one charge and to a fine of $100 or a further month r.i. on an additional charge relating to the possession of certain utensils.

I considered that the sentence was in the circumstances excessive and I reduced it. It should be noted that these offences are still dealt with under the Opium and Chandu Proclamation in which penalties authorised are grossly excessive, much more severe than those authorised under the Deleterious Drugs Ordinance which was intended to deal with the use of drugs much more obnoxious than chandu.

Sentence Reduced.

NAGAPPAN v. CHEN CHI YA.

[Court of Appeal (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) October 27, 1949]

[Singapore — Civil Appeal No. 14 of 1949]

Landlord and Tenant — Condition in tenancy agreement prohibiting assignment or sub-letting — Transfer of business.

In this case the premises belonging to the respondent were let to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord". Subsequently Singaraveloo transferred the business he carried on at the premises and left the premises. The appellant claimed the tenancy as a result of an agreement with Singaraveloo and one Pakirisamy. The learned trial Judge found that there was a prohibition against assignment or sub-letting and that there was no acquiescence to the transfer or sub-letting by the landlord. He held further that the tenancy of the premises was transferred to the appellant but held that the respondent was entitled to recover possession under the Control of Rent Ordinance, 1947.

The appellant appealed against this Order for possession.

Held, that the prohibition to assign was a condition of the tenancy agreement and the appellant could not therefore in the circumstances become the tenant of the respondent.

Cases referred to :—

(1) *Pollock v. Stacey* (1847) 9 Q.B. 1033.
(2) *Moore v. Greg* 2 P. 717.
(3) *Doe v. Watt* 8 B. & C. 308.
(4) *Commissioners of Works v. Hull* (1922) 1 K.B. 205.

COURT OF APPEAL.

K. E. W. Hatchard for the Appellant.

Mark Morrison for the Respondent.

The Court dismissed the appeal and stated that they would give their reasons later.

On 27th October, 1949 the reasons for the dismissal of the appeal were given by Evans, J., with which Murray-Aynsley, C.J. and Gordon-Smith, J. concurred.

Evans, J. : — On this appeal the court is asked to say that the learned judge in the court of first instance, having found for the defendant that he was a tenant to the plaintiff of certain premises at 1 Joo Chiat Road, went on wrongly to give the plaintiff possession of the premises for reasons based on the Control of Rent Ordinance 1947 which had neither been pleaded nor argued. The defendant appealed against this order for possession.

The respondent is the owner of these and other lands, the management of which is in the hands of his father. In November 1937 the premises were let on a monthly tenancy from 1st December 1937 to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord," and signed by the parties the landlord under the words "I confirm the above" and the tenant under the words "I agree to the above".